

The Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ZACHARY PILZ, an individual; BRENDA
CONTINE, an individual; JUAN LOPEZ, an
individual; et al.,

Plaintiffs,

v.

JAY INSLEE, Governor of the State of
Washington, et al.,

Defendants.

NO. 3:21-cv-05735-BJR

ANSWER TO COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND FOR DAMAGES

GENERAL DENIAL

Defendants Jay Inslee, Governor of the State of Washington; John Batiste, Chief of the Washington State Patrol; Cheryl Strange, Secretary of the Washington State Department of Corrections; Roger Millar, Secretary of the Washington State Department of Corrections; Derek Sandison, Secretary of the Washington State Department of Agriculture; Ross Hunter, Secretary of the Washington State Department of Children, Youth, and Families; Dr. Umair Shah, Secretary of the Washington State Department of Health; and Joel Sacks, Secretary of the Washington State Department of Labor and Industries (Defendants) answer Plaintiffs' Complaint for Injunctive and Declaratory Relief and for Damages (Complaint). Except as expressly admitted or qualified, Defendants deny each and every allegation, statement, or charge contained in the

1 Complaint, and deny that Plaintiffs are entitled to any of the relief requested.

2 The coronavirus disease 2019 (COVID-19) pandemic is an unprecedented state, national,
3 and international emergency that requires a commensurate governmental response to protect public
4 health and save lives. The emergency orders issued by the Governor, like similar orders issued by
5 numerous national, state, regional, and local governments around the world, address the pandemic
6 by taking steps to mitigate the spread and lower the hospitalizations and fatalities caused by
7 COVID-19. Specifically, Proclamation 21-14, as amended (collectively, the “Proclamation” or
8 “Proclamation 21-14”), is a lawful exercise of the Governor’s emergency powers that infringes
9 none of Plaintiffs’ constitutional or statutory rights. Defendants respond to the numbered allegations
10 in the Complaint as follows:

11 INTRODUCTION

12 1. Paragraph 1 asserts legal conclusions to which no response is required. To the extent
13 a response is required, Paragraph 1 is denied.

14 2. Defendants deny Paragraph 2.

15 3. Paragraph 3 asserts primarily allegations about Plaintiffs purported motivations,
16 to which no response is required. To the extent a response is required, Paragraph 3 is denied.

17 VENUE AND JURISDICTION

18 4. Defendants deny the Court has jurisdiction over Plaintiffs’ claims based on
19 allegations that Defendants violated state law. Defendants admit the Court has jurisdiction over
20 Plaintiffs’ federal-law claims, however, under the principles outlined in *Burford v. Sun Oil Co.*,
21 319 U.S. 315 (1943), *Colorado River Water Conservation District v. United States*, 424 U.S.
22 800 (1976), and their progeny, this Court should decline to exercise jurisdiction over those
23 federal-law claims.

24 5. Defendants deny that venue is proper in this Court.
25
26

PARTIES

6.–105. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraphs 6 through 105, and therefore denies them.

106. Defendants admit Paragraph 106.

107. Defendants admit Paragraph 107.

108. Defendants admit Paragraph 108.

109. Defendants admit Paragraph 109.

110. Defendants admit Paragraph 110.

111. Defendants admit Paragraph 111.

112. Defendants admit Paragraph 112.

113. Defendants admit Paragraph 113.

FACTS

114. Defendants admit that Plaintiff Michael Faulk sought a medical exemption under the Proclamation from Washington State Patrol. To the extent Paragraph 114 incorporates factual allegations regarding other, unnamed plaintiffs, Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 114, and therefore deny them.

115. Defendants admit that Plaintiff Zachary Pilz sought a religious exemption under the Proclamation from the Department of Children, Youth, and Families. To the extent Paragraph 115 incorporates factual allegations regarding other, unnamed plaintiffs, Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 115, and therefore deny them. The remaining allegations of Paragraph 115 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 115.

116. Paragraph 116 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

1 117. Defendants admit that Paragraph 117 accurately quotes the email included as part
2 of Paragraph 117. The document speaks for itself. To the extent a further response is required,
3 the allegations are denied.

4 118. Defendants deny Paragraph 118.

5 119. Defendants deny Paragraph 119.

6 120. Defendants are without information sufficient to form a belief as to the truth of
7 the allegations in Paragraph 120, and therefore deny them.

8 121. Defendants are without information sufficient to form a belief as to the truth of
9 the allegations in Paragraph 121, and therefore deny them.

10 122. Defendants deny Paragraph 122.

11 123. Defendants deny Paragraph 123.

12 124. Defendants deny Paragraph 124.

13 125. Defendants deny Paragraph 125.

14 126. Defendants are without information sufficient to form a belief as to the truth of
15 the allegations in Paragraph 126, and therefore deny them.

16 127. Defendants are without information sufficient to form a belief as to the truth of
17 the allegations in Paragraph 127, and therefore deny them.

18 128. Defendants are without information sufficient to form a belief as to the truth of
19 the allegations in Paragraph 128, and therefore deny them.

20 129. Defendants are without information sufficient to form a belief as to the truth of
21 the allegations in Paragraph 129, and therefore deny them.

22 130. Defendants are without information sufficient to form a belief as to the truth of
23 the allegations in Paragraph 130, and therefore deny them.

24 131. Defendants deny Paragraph 131.

25 132. Defendants deny Paragraph 132.

1 133. Paragraph 133 contains legal conclusions and argument to which no response is
2 required. To the extent a further response is required, the allegations are denied.

3 134. Paragraph 134 contains legal conclusions and argument to which no response is
4 required. To the extent a further response is required, the allegations are denied.

5 135. Paragraph 135 contains legal conclusions and argument to which no response is
6 required. To the extent a further response is required, the allegations are denied.

7 136. Paragraph 136 purports to quote a document without attaching the document.
8 Defendants are without information sufficient to form a belief as to the truth of the allegations
9 in Paragraph 136, and therefore deny them.

10 137. Paragraph 137 contains legal conclusions and argument to which no response is
11 required. To the extent a further response is required, the allegations are denied.

12 138. Paragraph 138 contains legal conclusions and argument to which no response is
13 required. To the extent a further response is required, the allegations are denied.

14 139. Paragraph 139 contains legal conclusions and argument to which no response is
15 required. To the extent a further response is required, the allegations are denied.

16 140. Paragraph 140 contains legal conclusions and argument to which no response is
17 required. To the extent a further response is required, the allegations are denied.

18 141. Paragraph 141 contains legal conclusions and argument to which no response is
19 required. To the extent a further response is required, the allegations are denied.

20 142. Paragraph 142 contains legal conclusions and argument to which no response is
21 required. To the extent a further response is required, the allegations are denied.

22 143. Defendants are without information sufficient to form a belief as to the truth of
23 the allegations in Paragraph 143, and therefore deny them.

24 144. Defendants are without information sufficient to form a belief as to the truth of
25 the allegations in Paragraph 144, and therefore deny them.
26

1 145. Paragraph 145 purports to quote a document without attaching the document.
 2 Defendants are without information sufficient to form a belief as to the truth of the allegations
 3 in Paragraph 145, and therefore deny them.

4 146. Paragraph 146 contains legal conclusions and argument to which no response is
 5 required. To the extent a further response is required, the allegations are denied.

6 147. Paragraph 147 contains legal conclusions and argument to which no response is
 7 required. To the extent a further response is required, the allegations are denied.

8 148. Paragraph 148 contains legal conclusions and argument to which no response is
 9 required. To the extent a further response is required, the allegations are denied. Paragraph 148
 10 also purports to quote a document without attaching the document. Defendants are without
 11 information sufficient to form a belief as to the truth of the allegations in Paragraph 148 relating
 12 to the document, and therefore deny them.

13 149. Paragraph 149 contains legal conclusions and argument to which no response is
 14 required. To the extent a further response is required, the allegations are denied.

15 150. Paragraph 150 contains legal conclusions and argument to which no response is
 16 required. To the extent a further response is required, the allegations are denied.

17 151. Defendants deny Paragraph 151.

18 152. Plaintiffs admit that some employees who are separated from their employment
 19 for failure to comply with the Governor's Proclamation might not be eligible for unemployment
 20 benefits. Defendants deny the remaining allegations of Paragraph 152.

21 153. Defendants deny Paragraph 153.

22 154. Paragraph 154 contains legal conclusions and argument to which no response is
 23 required. To the extent a further response is required, the allegations are denied.

24 155. Paragraph 155 contains legal conclusions and argument to which no response is
 25 required. To the extent a further response is required, the allegations are denied.
 26

1 156. Paragraph 156 contains legal conclusions and argument to which no response is
2 required. To the extent a further response is required, the allegations are denied.

3 157. Paragraph 157 contains legal conclusions and argument to which no response is
4 required. To the extent a further response is required, the allegations are denied.

5 158. Paragraph 158 contains legal conclusions and argument to which no response is
6 required. To the extent a further response is required, the allegations are denied.

7 159. Paragraph 159 contains legal conclusions and argument to which no response is
8 required. To the extent a further response is required, the allegations are denied.

9 160. Paragraph 160 contains legal conclusions and argument to which no response is
10 required. To the extent a further response is required, the allegations are denied.

11 161. Paragraph 161 contains legal conclusions and argument to which no response is
12 required. To the extent a further response is required, the allegations are denied.

13 162. Paragraph 162 contains legal conclusions and argument to which no response is
14 required. To the extent a further response is required, the allegations are denied.

15 163. Paragraph 163 contains legal conclusions and argument to which no response is
16 required. To the extent a further response is required, the allegations are denied.

17 164. Paragraph 164 contains legal conclusions and argument to which no response is
18 required. To the extent a further response is required, the allegations are denied.

19 165. Paragraph 165 contains legal conclusions and argument to which no response is
20 required. To the extent a further response is required, the allegations are denied.

21 166. Paragraph 166 contains legal conclusions and argument to which no response is
22 required. To the extent a further response is required, the allegations are denied.

23 167. Paragraph 167 contains legal conclusions and argument to which no response is
24 required. To the extent a further response is required, the allegations are denied.

25 168. Paragraph 168 contains legal conclusions and argument to which no response is
26 required. To the extent a further response is required, the allegations are denied.

169. Paragraph 169 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

170. Paragraph 170 contains legal conclusions, arguments, and a list of materials purportedly incorporated in Plaintiffs' Complaint, to which no response is required. To the extent a further response is required, the allegations are denied.

FIRST CAUSE OF ACTION

Due Process – Governor Lacks Authority

171. Defendants incorporate by reference their answers to the preceding paragraphs.

172. Paragraph 172 contains legal conclusions, arguments, and a list of materials purportedly incorporated in Plaintiffs' Complaint, to which no response is required. To the extent a further response is required, the allegations are denied.

173. Paragraph 173 contains legal conclusions, arguments, and a list of materials purportedly incorporated in Plaintiffs' Complaint, to which no response is required. To the extent a further response is required, the allegations are denied.

174. Defendants deny Paragraph 174.

175. Defendants deny Paragraph 175.

SECOND CAUSE OF ACTION

Free Exercise of Religion

176. Defendants incorporate by reference their answers to the preceding paragraphs.

177. Defendants deny Paragraph 177.

178. Defendants deny Paragraph 178.

179. Defendants deny Paragraph 179.

THIRD CAUSE OF ACTION

Americans with Disabilities Act

180. Defendants incorporate by reference their answers to the preceding paragraphs.

1 181. Paragraph 181 contains legal conclusions and arguments to which no response is
2 required. To the extent a further response is required, the allegations are denied.

3 182. Paragraph 182 contains legal conclusions and arguments to which no response is
4 required. To the extent a further response is required, the allegations are denied.

5 183. Paragraph 183 contains legal conclusions and arguments to which no response is
6 required. To the extent a further response is required, the allegations are denied.

7 184. Paragraph 184 contains legal conclusions and arguments to which no response is
8 required. To the extent a further response is required, the allegations are denied.

9 185. Paragraph 185 contains legal conclusions and arguments to which no response is
10 required. To the extent a further response is required, the allegations are denied.

11 186. Paragraph 186 contains legal conclusions and arguments to which no response is
12 required. To the extent a further response is required, the allegations are denied.

13 187. Defendants deny Paragraph 187.

14 188. Defendants deny Paragraph 188.

15 **FOURTH CAUSE OF ACTION**

16 **Title VII of the Civil Rights Act**

17 189. Defendants incorporate by reference their answers to the preceding paragraphs.

18 190. Defendants are without information sufficient to form a belief as to the truth of
19 the allegations in Paragraph 190, and therefore deny them.

20 191. Defendants deny Paragraph 191.

21 192. Defendants are without information sufficient to form a belief as to the truth of
22 the allegations in Paragraph 192, and therefore deny them.

23 193. Defendants are without information sufficient to form a belief as to the truth of
24 the allegations in Paragraph 193, and therefore deny them.

25 194. Defendants are without information sufficient to form a belief as to the truth of
26 the allegations in Paragraph 194, and therefore deny them.

195. Defendants deny Paragraph 195.

196. Defendants deny Paragraph 196.

197. Defendants deny Paragraph 197.

198. Defendants deny Paragraph 198.

FIFTH CAUSE OF ACTION

Contracts Clause and Breach of Contract

199. Defendants incorporate by reference their answers to the preceding paragraphs.

200. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 200, and therefore deny them.

201. Paragraph 201 contains legal conclusions and arguments to which no response is required. To the extent a further response is required, the allegations are denied.

202. Defendants deny Paragraph 202.

203. Defendants deny Paragraph 203.

204. Defendants deny Paragraph 204.

205. Defendants deny Paragraph 205.

SIXTH CAUSE OF ACTION

Due Process – *Loudermill*

206. Defendants incorporate by reference their answers to the preceding paragraphs.

207. Paragraph 207 contains legal conclusions and arguments to which no response is required. To the extent a further response is required, the allegations are denied.

208. Defendants deny Paragraph 208.

209. Paragraph 209 contains legal conclusions and arguments to which no response is required. To the extent a further response is required, the allegations are denied.

210. Paragraph 210 contains legal conclusions and arguments to which no response is required. To the extent a further response is required, the allegations are denied.

211. Defendants deny Paragraph 211.

SEVENTH CAUSE OF ACTION

Equal Protection – 14th Amendment of the United States Constitution

212. Defendants incorporate by reference their answers to the preceding paragraphs.

213. Paragraph 213 contains legal conclusions and arguments to which no response is required. To the extent a further response is required, the allegations are denied.

214. Defendants deny Paragraph 214.

215. Defendants deny Paragraph 215.

216. Defendants deny Paragraph 216.

EIGHTH CAUSE OF ACTION

Violations of Individual Rights of Privacy and Informed Consent

217. Defendants incorporate by reference their answers to the preceding paragraphs.

218. Defendants deny Paragraph 218.

219. Defendants deny Paragraph 219.

220. Defendants deny Paragraph 220.

221. Defendants deny Paragraph 221.

222. Defendants deny Paragraph 222.

RELIEF REQUESTED

Paragraphs A through E of the Relief Requested Section of the Complaint constitute Plaintiffs' requests for relief, to which no response is required. To the extent a response is required, Defendants deny Plaintiffs are entitled to the relief requested or to any relief whatsoever.

DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants' affirmative defenses to the Complaint are set forth below. By setting forth the following defenses, Defendants do not assume burden of proof on the matter and issue other than those on which they have the burden of proof as a matter of law. Defendants reserve the right to supplement these defenses.

1. Defendants are entitled to qualified immunity.

2. Plaintiffs have failed to exhaust administrative remedies.

3. Plaintiffs lack standing.

4. Plaintiffs' claims are moot.

5. Plaintiffs' claims are unripe.

6. This case is non-justiciable because the Governor's actions pursuant to his emergency powers are not subject to judicial review.

7. Plaintiffs have failed to state a claim upon which relief may be granted.

8. Plaintiffs' claims alleging violations of state law are barred by the Eleventh Amendment and principles of sovereign immunity.

9. Plaintiffs have failed to join necessary parties.

10. Plaintiffs have sued the wrong parties.

11. Plaintiffs lack privity with the Defendants.

12. Plaintiffs' claims are barred by res judicata.

13. Plaintiffs' claims are barred by collateral estoppel.

14. Plaintiffs' claims are subject to abstention under the principles outlined in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), and their progeny.

15. Plaintiffs' claims are barred in whole or in part by the doctrines of laches, waiver, unclean hands, accord and satisfaction, and/or ratification.

DEFENDANTS' REQUEST FOR RELIEF

Wherefore, Defendants pray that the Court:

1. Dismiss Plaintiffs' Complaint with prejudice;

2. Deny all relief that Plaintiffs request;

3. Grant Defendants their costs and reasonable attorneys' fees; and

1 4. Grant Defendants such other and further relief as the Court may deem just and
2 proper.

3 DATED this 27th day of October 2021.

4 ROBERT W. FERGUSON
5 Attorney General

6 /s/ Andrew R.W. Hughes
7 ANDREW R.W. HUGHES, WSBA #49515
8 Assistant Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104-3188
11 (206) 464-7744
12 Andrew.Hughes@atg.wa.gov

13 ZACHARY PEKELIS JONES, WSBA #44557
14 KAI A. SMITH, WSBA #54749
15 Special Assistant Attorneys General
16 PACIFICA LAW GROUP LLP
17 1191 2nd Ave. Suite 2000
18 Seattle, WA 98101
19 (206) 245-1700
20 Zack.Pekelis.Jones@atg.wa.gov
21 Kai.Smith@atg.wa.gov
22 Attorneys for Defendants

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 27th day of October 2021, at Seattle, Washington.

/s/ Andrew R.W. Hughes

ANDREW R.W. HUGHES, WSBA #49515
Assistant Attorney General